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ABSTRACT

This publication consists of 29 articles that were published between April 1974 and June 1977 in the "Students and the Law" column of the National Association of Secondary School Principals' magazine, the "Student Advocate." In editing the articles, an attempt has been made to eliminate or update any suggestions or conclusions that may have been inaccurate because of changes in the law. Titles of the articles include: "Student Rights and Responsibilities," "Due Process," "Rights to Privacy," "Suspension and Due Process," "Students' Constitutional Rights," "Expulsion and Suspension," "Do Students Have Rights?" "Students in Double Jeopardy," "Student Records," "Smoking in the Public Schools," "Student Responsibilities," "Freedom of Speech," "Hair and Dress Codes," "Student Marriage and Pregnancy," "Patriotic Observances," "Compulsory School Attendance," "Sex Ed Controversy," "Title IX--Ending Sex Discrimination," "Brown Bagging with Federal Funds," "Use of School Funds," "Student Council Rights," "Students on School Boards," "Age of Majority," "The Long Arm of the High School," "Minors and Contracts," "Tours for Students," "Federal Laws on Youth Employment," "Warranties and Guarantees," and "Curfews." (JG)

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Students & the Law

Ivan B. Gluckman

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National Association of Secondary School Principals
Office of Student Activities
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FOREWORD

The last decade has seen a virtual revolution in the way in which the law and the courts have viewed education. A major focus of the new attention paid to educational matters has been the legal status of the student in relation to school personnel, to the school system itself, and to the society at large.

Because of the rapid change in the general approach of the law's application to students and youth, NASSP has provided both background and guidance to student advisers and student leaders on topics of concern. The primary means of doing this has been through the "Students & the Law" column, written by the Association's legal counsel, Ivan B. Gluckman, as a regular feature for the *Student Advocate*, NASSP's student activities magazine.

After three years of publication, we have collected these columns, edited and organized them by subject area, making them available under one cover for readers to locate material more easily on a particular topic.

An attempt has been made to eliminate or update any suggestions or conclusions that may have become inaccurate because of changes in the law since original publication of the material. There may be some overlap, or even slight differences in position, among articles on related subjects that were written at different periods of time. Where this occurs, the more recent one should be used as a guideline to the present law.

It is our hope that, despite the rapid change in the legal framework in which the student functions, this monograph will be of value to advisers and students seeking guidance on legal issues.

Owen B. Kiernan
Executive Director,
NASSP

Due Process and the Constitution

What are the rights and responsibilities of students? When are students entitled to due process? What are a student's rights regarding the confidentiality of his school records?

Federal laws, the Bill of Rights and court decisions provide the basis for answering these and related questions. While the courts will review student complaints where there have been clear-cut violations of specific Constitutional guarantees, they do not seek to interfere with the authority of the school, or the proper exercise of administrative discretion.

Students are entitled to at least a minimum of due process, particularly in regard to disciplinary actions that involve suspension or expulsion. Students over 18 years of age have been granted the right to inspect their school records, and the law safeguards the release of these records from persons outside of the school system.

The articles in this and subsequent sections are in the chronological order of publication as they appeared in the "Students & the Law" column of the ***Student Advocate*****.**

Student Rights & Responsibilities

If Americans are put down, held down, and stripped of their legal rights (as many say they are), it can't be for lack of information. Students in particular have had their rights and responsibilities laid out in innumerable codes and handbooks. Most of these are published by state departments of education, school districts, and private organizations.

In recent years, however, many general guides to student rights and responsibilities have hit bookstores and educator's offices. Two of them are *The Rights of Students* by Alan H. Levine, Eve Carey, and Diane Divoky (Avon Books, New York, $1.50) and *The Rights You Have* by Osmond K. Fraenkel. (Warner Paperback Library, New York, $1.25).

The Rights of Students

The Rights of Students is part of an American Civil Liberties Union series that deals with the rights of mental patients, prisoners, servicemen, teachers, and women. It provides a question-and-answer summary of current laws affecting students in American public schools, including the right to a free public education, First Amendment rights, personal appearance, due process, law enforcement, corporal punishment, tracking and classification methods, marriage and pregnancy, school records, and grades and diplomas.

Written as a handbook for student use, *The Rights of Students* emphasizes those aspects of the law that affirm student and ACLU positions. However, the reporting of legal decisions is professional and responsible.

The question-and-answer format leads readers quickly to information on specific issues. Many of the answers are necessarily oversimplified, but each chapter includes extensive references to specific cases and other sources. Research into those sources and into local regulations is essential to anyone who wants to make full use of the book—in drafting a code of rights and responsibilities, for example. A selected bibliography is also included.

The Rights You Have

Fraenkel's *The Rights You Have* gives an overview of the status of civil liberties in the society at large—not just in schools. Several areas not usually explored in student rights handbooks may be found here: confessions, trial by jury, the right to a clean environment, demonstrations, freedom of association, the use of the mails, perjury, and convicts' rights. A detailed index makes specific information easy to find, and most subjects are treated in more detail here than in *The Rights of Students*.

A person who wants a broad understanding of student rights would do well to read both of these books. *The Rights of Students* deals with specific student issues, while *The Rights You Have* shows how those issues fit into the concerns of society as a whole.

New Legal Bibliography Available

The Committee on Youth Education for Citizenship of the American Bar Association has done a big favor for everyone concerned with legal rights education. Their 80-page comprehensive guide to civil liberties materials in print lists hundreds of books, pamphlets, and other publications on subjects ranging from civil disobedience and drug abuse to urban problems and consumer protection.

The guide is intended to meet the needs of teachers and students in the high school law classes which are being started all over the U.S. It is up to date and thorough. Single copies of the *Bibliography of Law-Related Curriculum Materials* are available free from the American Bar Association, Committee on Youth Education for Citizenship, 1155 East 60th Street, Chicago, Ill. 60637.

Due Process

Like relativity, *due process* is a term that everybody has heard, but few can define. Over the past decade, it has been heard more and more often in schools, first on college campuses and then in high school corridors. But many students still have doubts about what due process is, when they are owed it, and what to do if it's denied to them.

If due process can be defined in a word, it means fairness. More specifically, it is fairness applied to the process of judging someone's actions. The concept of due process developed as part of criminal law—for example, someone accused of a crime has a right to a *fair* trial; he can't be imprisoned just because someone "knows" he's guilty.

More recently, due process has been recognized as a right of individuals in civil (non-criminal) cases. For example, condemnation of property for a highway project or deprivation of constitutional rights to free speech or assembly are common areas of civil (non-criminal) interests where the due process concept has been applied.

Due Process in Schools

Until the 1960s, schools and school authorities were not regarded by the courts as subject to due process requirements. The historic precedent for this was the idea that the relationship of the school to its students, like that of parents to children, was a special one. Courts seldom interfered with the decisions of school authorities, who generally resolved conflicts in their schools as they saw fit—usually without due process.

Most issues of due process in schools center on the ways in which alleged student misconduct or violation of school policies is handled. These *procedural* (or process) questions about the way in which discipline is carried out in schools are often important to students.

When is "Due Process" Due? Most courts are still unwilling to involve themselves in disciplinary matters which don't affect basic interests such as liberty or property. As a result, they haven't specified procedures for assigning disciplinary penalties like after-school detention, extra homework, or even corporal punishment (where it's allowed at all).

The courts have limited their concern primarily to suspension or expulsion from school, especially where it interferes with the student's chance of staying with his class.

What Process is Due? What procedures satisfy due process requirements for schools? Again, the basic idea is fairness.

Most courts have focused on three major aspects of a student's right to due process in school disciplinary proceedings: *adequate notice*, a *fair hearing*, and an *impartial judgment*.

Notice. A student accused of breaking a school rule should be told what rule he is suspected of breaking and what penalty is proposed. Ideally, he or she and his parents should be informed of these things in writing, sufficiently in advance of any hearing to be able to prepare a defense. Most schools also believe, and some courts require, that the student be informed of the rules to be followed when he enters the school.

Hearing. If a hearing is to be held, advance written notice of time, place, and an explanation of the rights the student may exercise at the hearing should be given. These rights might include representation by a parent or lawyer and/or the right to call witnesses in his defense.

Courts have rarely required any *particular form* of hearing in student disciplinary cases and have not spelled out specifics of how a school hearing should be conducted. Few courts have required that students be given the right to cross-examine witnesses or to refuse to testify on grounds of self-incrimination. However, the courts do agree that the student should be given a chance to offer a defense. If the offense charged is a serious one, punishable to expulsion or a long suspension, greater opportunity must be given the accused student to defend himself. In short—it's got to be fair!

Judgment. The judgment must be based on substantial evidence, and any punishment must "suit the crime"—suspension for one tardiness offense, for example, probably would be considered unsuitable or unreasonable. Finally, the judge must be impartial. The principal or some other school administrator may preside if he hasn't been closely involved in the events leading to the hearing, and if he avoids showing prejudice, bias, or self-interest. Many schools have established hearing panels on which students as well as faculty and/or administrators sit in judgment.

Avenues of Appeal

One important element of due process that has *not* usually been required in schools is the right of students to appeal administrative decisions. Many courts feel it would be just too great a burden to place upon the schools. Some schools have provided for appeals voluntarily, at least in more serious cases. Of course, every student has the right to go to a public court if he feels unjustly treated, and more of them are doing it every year. But lawyers are costly, and court procedures are slow.

If both students and school administrators know their rights and the rights of others, they can settle their problems quickly and efficiently—and fairly—in school.

Rights to Privacy

How "Confidential" is Confidential? As a result of public furor over wiretapping and Watergate tapes, many people are becoming increasingly sensitive about their rights to privacy. Court records, credit rating information, membership in various groups, medical histories—all of these areas and many others are now being examined.

The electronic data processing, storage, and retrieval made possible by computers have made issues of confidentiality and privacy a major concern.

Recent articles in popular magazines and television programs have focused on some of these problems. The use of school records is one of the subjects in the spotlight. Researchers unearthed cases of information from students' personal records being turned over to employers and other unauthorized persons—without the student's knowledge or consent.

Perhaps some of the worst stories were isolated cases, but there can be no doubt that abuses *have* occurred. Even where they have not, there is still reason for concern about the potential for such misuse of confidential records.

Keeping Confidential Records Confidential

Collecting and maintaining data about students and school employees, and at the same time keeping it out of the hands of those it does not concern, is a problem that school administrators have been aware of for some time. Several years ago, the Russell Sage Foundation, an organization concerned with the improvement of social and living conditions in the U.S., sponsored a meeting of experts in law, education, and related fields to produce guidelines for handling student records.

The basic principles of the Sage Foundation's guidelines were these:

- No information should be collected without the informed consent of pupils and their parents.
- Data should be classified into (a) administrative records, (b) verified personal information clearly related to school functions, and (c) unverified information and information not closely related to school functions.
- Each kind of data should be stored and handled separately, with care that only those who truly need a particular piece of information have access to it.

More recently, a broader study was undertaken by a committee appointed by the secretary of the U.S. Department of Health, Education and Welfare. The committee's report, *Records, Computers, and the Rights of Citizens*, was released in July 1973 and lists some basic safeguard requirements. An individual must be able:

- to find out what information about him is in a record and how it is used.
- to prevent information that was obtained for one purpose from being used or made available for other purposes without his consent.
- to correct errors in any record of identifiable information about him.

Opening the Files—But Not Very Far

Most of the ideas included in the Sage Foundation's guidelines and the HEW committee's report were adopted as an amendment to the Education Act of 1974, signed into law that fall. The Act specifically requires that school systems permit parents to have access to their children's school records; it also states that students must have access to their own records when they reach 18.

Further, students' records cannot be released to persons other than school officials unless parents have been informed and have given consent. There are three exceptions: when the information is to be (a) used as part of an application by the student for financial aid, (b) sent to another school when the student transfers, or (c) released in compliance with a court order.

Why Keep Confidential Records?

Fair-minded educators recognize the desirability of protecting student privacy as they would want to protect their own. Many people have questioned whether or not the school needs to keep information of a personal nature at all, but most people agree that information on students' grades, behavior, learning and environmental problems, medical history, and handicaps is important in evaluating, counseling, and assisting students in or out of school.

This side of the student record issue is as important as the issue of privacy. The difficulty is to keep useful information and to maintain privacy at the same time. Student leaders can play an important role in improving the process by finding out what school policies on student records are and letting the students know about them.

Editor's note: Records, Computers, and the Rights of Citizens *is available for $3.40 per copy from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Stock No. 1700-00116).* The NASSP Legal Memorandum on the Confidentiality of Pupil School Records *is available from NASSP Publication Sales, 1904 Association Dr., Reston, Va. 22091,* for 50 cents per copy.

Suspension and Due Process

In January 1975 the first of three cases related to student conduct, Goss *vs.* *Lopez* was decided. The case arose when a number of high school students in Columbus, Ohio, were suspended as the result of disorders connected with a racial incident. The issues were (a) whether or not high school students can legally be suspended without due process of law, and (b) if due process is required, what elements of it apply to students facing suspension.

Suspension Without Due Process—Constitutional?

A State of Ohio statute clearly stated that the principal of a high school had the power to suspend a student for up to 10 days, provided that he notified the student's parents within 24 hours and provided them with the reason for his action. The student or his parents were also permitted to appeal the decision to the school board and to have a hearing if they so desired.

The Columbus students claimed that this law was unconstitutional because it permitted students to be deprived of their rights to an education without any kind of hearing in advance of their suspension.

The case was important for at least two reasons. First, there has been a lot of argument in recent years over whether there is such as thing as "a right to education", and, if there is, what kind of a right it is.

The Supreme Court declared only a year or so ago before that there was no such right under the U.S. Constitution. But, in this case, the Court conceded that the Ohio students had a right to their education under the state laws that provided for public education. Students would have to be accorded due process before that right could be taken away or interfered with.

What "Kind" of Due Process?

The second big question was: What due process is required for suspensions of 10 days or less, (often called short-term suspensions)? The majority of the Court decided—only a 5-4 majority—that three basic elements were required: (a) some kind of notice of the charges, (b) an explanation of the evidence to support those charges, and, as Justice Byron White put it, (c) "an opportunity to present the student's side of the story."

The Court said that these requirements did not mean that formal hearings must be held or even that any of the proceedings be in writing. It also recognized that there are some situations in which students must be removed from school without even basic requirements of due process. Examples are when a student's presence endangers other persons or property, or when a student threatens the disruption of the educational process. In such cases the Court approved the immediate removal of the student, but urged that the required notice and hearing be provided as soon after the removal as possible.

Will *Goss* Lead to Chaos?

Many people have expressed concern over the Supreme Court's opinion in the *Goss* case,—including the four dissenting members of the Court itself. As Justice Powell noted, the decision may be used as a basis for challenging every kind of decision made by school boards, principals, and even teachers. It is to be hoped that intelligent students will not try, and wise judges will not permit, the use of the decision in this way.

What does the decision in *Goss vs. Lopez* mean to students? All that the Court has said in this decision is that students accused of breaking school rules should be treated fairly.

Students' Constitutional Rights

Can students sue school boards for violating their constitutional rights? Yes, according to a U.S. Supreme Court decision—if the school board members knew (or should have known) that their action would violate the students' rights.

The case that led to this ruling is *Wood vs. Strickland*, decided by the Court in February 1975. *Wood vs. Strickland*, sometimes called the "spiked punch case," involved two Arkansas high school students who added malt liquor to the punch they prepared for a parent-student activity at their school. They prepared the punch at home and then brought it to school in a milk carton.

No one noticed any intoxicating effects from the punch, but 10 days after the event, the teacher in charge heard what had happened. Upon questioning, the students confessed and were temporarily suspended by the principal, who reported the incident to the school board. The board suspended the students for the balance of the school year.

Damages for Students?

Under the Civil Rights Act of 1871, public employees who violate a citizen's constitutional rights (for example, by denying the right to vote or the right to a trial) can be sued; if they are found guilty, they may have to pay damages to the citizen who has been deprived of his rights. In *Wood vs. Strickland*, the Supreme Court had to decide if *school board members* could also be sued for money damages. Could the Arkansas students demand payment for the violation of their rights? Would the school board have to pay them?

By a 5-4 decision, the Court ruled that school board members can be sued and may have to pay financial damages if their action has violated a student's rights. The Court refused to rule, however, that the school board's decision was incorrect.

Adding the malt liquor to the punch was a violation of the school's rules, and the fact that the punch wasn't intoxicating enough to make anyone notice the malt liquor made no difference, said the Court. The students admitted that they had violated the regulation.

When *Rights* are Involved

However, what if a student who is *not* breaking the law is deprived of his rights by the school board? For example, a student who expresses a controversial opinion in a student council meeting and is suspended solely for that reason may have a legal claim against the school board on the basis of the First Amendment. However, if he destroys school property and is then suspended, he could make no such claim.

In *Wood vs. Strickland*, the Supreme Court made some important statements about the rights of high school students, the responsibilities of school officials, and the authority of the courts. The Court said that "public high school students do have substantive and procedural rights while at school"; and that "the system of public education that has evolved in this Nation relies necessarily upon the discretion and judgment of school administrators and school board members." The Court added that it is not the business of the courts to determine

whether or not school administrators have made decisions which are "lacking in wisdom or compassion" and that the courts have no power to correct school officials except where there have been clear-cut violations of "specific constitutional guarantees."

In short, the Court does not intend to interfere with the administration of discipline by school officials. However, school board members and administrators are responsible for taking the students' rights into account when they make disciplinary decisions.

Expulsion and Suspension

Carol, a sophomore, was taken to the principal's office yesterday after she was caught drinking on school grounds for the second time. The teacher who brought her to the principal said he had seen her drinking from a small jar, and Carol's breath had a strong smell of alcohol. A search revealed a pint jar half full of bourbon near where Carol had been standing when the teacher found her.

The principal told Carol that he would have to suspend her for drinking and asked her to explain her actions and the presence of the jar. Carol shrugged her shoulders and said nothing. The principal ordered a seven-day suspension. *Did the principal act within the law?*

Juniors Eric and Linda, who have been going together since their sophomore year, have a quarrel. In spite, Eric tells a guidance counselor that Linda tried to sell him illegal drugs in the school cafeteria. The counselor notifies the principal, who calls Linda into his office. As she walks through the door, the principal says, "You're suspended. Fifteen days." *Did the principal act within the law?*

Many school officials, whether they face serious or minor problems in student discipline, have had to take a close look at their policies on ordering students out of school—suspension or expulsion. Two recent U.S. Supreme Court decisions, *Goss vs. Lopez* and *Wood vs. Strickland*, have led many states and school districts to redefine those policies.

After extensive review of the two Supreme Court cases, the National Association of Secondary School Principals has come up with these recommendations for *minimum due process* for students who are threatened with suspension or expulsion. Many state and school district codes have firmer guarantees for students, but the law demands at least these minimum requirements.

Expulsion or Long-Term Suspension (more than 10 days)

A student:

- can be expelled only by the school board, not by an individual principal.
- must be granted a full, fair hearing before an impartial adult (not the person who accused him).
- must receive written notice of a) what rules he has violated, b) the school board's intention to expel (or the principal's intention to suspend), and c) the time, place, and circumstances of the hearing—with sufficient time to prepare a defense.
- has the right to legal counsel or some other adult representation.
- can present witnesses and/or evidence in his own behalf and can cross-examine opposing witnesses.
- must receive a written statement that the decision to expel or suspend is based on the evidence presented.

Short-Term Suspension (one to 10 days)

At minimum, school officials are required to provide:

- oral or written notice of the nature of the violation and the intended punishment (notice may be given very shortly before suspension is ordered).
- an opportunity for the student to tell his side of the story.
- an explanation of the evidence that the disciplinarian is using to make a decision to suspend.

Now, go back to the "cases" at the beginning of this column. The principal told Carol what her offense was and what he intended to do about it, gave her a chance to present her side of the story, and explained that the evidence of the bottle and alcohol on her breath justified a suspension. His action was within the law. A principal who fulfills the minimum rights of the law is justified in ordering short-term suspensions like Carol's, usually not more than 10 days and, in some states, no more than five.

However, Linda was "convicted" on the basis of Eric's statement alone. Neither Eric nor the counselor produced any evidence that Linda had tried to sell drugs to Eric; the principal gave Linda no chance to explain, deny, or agree to the charge and gave no notice of the intended punishment. In a real school situation, this principal's action would be a violation of Linda's right to due process, and she could appeal the principal's decision to the school board or a court.

The intention of the Supreme Court's decisions in *Goss vs. Lopez* and *Wood vs. Strickland* is not to tie principals' hands on student discipline; nor is it to encourage students to challenge administrative decisions. Rather, the decisions recognize that students, as citizens, have constitutional rights to due process when they are threatened with removal from school.

Do Students Have Rights?

The beginning of a new school year is a good time to ask some questions about students' rights and responsibilities at your school. What are my rights as a student?

Are they the same as adult citizens? Can the school limit my rights while I am here? How much?

Most schools now have a student handbook that describes school rules. The school board, through its superintendent and your school's principal, has the legal authority and the responsibility to make and enforce rules that they believe will help them to provide you with an education.

Once, this general authority was very broad and rarely subject to challenge on either personal or legal grounds, but in recent years, the courts have recognized that students have the same fundamental rights as other citizens. If a school rule, or the way in which it is administered, interferes with one of these fundamental rights, the school may not be able to enforce it.

However, all rights—whether in school or out—can be limited or restrained where the public interest requires it. A classic example: A person has the basic right to free speech, but the *public interest* would restrain him from shouting "Fire!" in a crowded theater if there were no fire.

One of the rights most often involved in school questions is freedom of speech and assembly. A school can't forbid students to express their opinions or to hold a meeting on school premises (right of assembly). However, a school may set *reasonable restrictions* upon speech or assembly. Students are not permitted to give speeches on sex, politics, or religion in math class. Nor can they hold a protest meeting in a crowded corridor.

Discipline

Another area of concern to students is discipline. Until fairly recently, public schools had the right to exercise discipline *in loco parentis* (as a parent would do.) In the law's words, the educator stood "in the place of the parent." Under law, parents can punish their children in any way they want to—short of extreme physical abuse. *In loco parentis* meant that there were few restraints, if any, on how teachers or principals could punish students.

Now, the school's authority to discipline students is more limited. Educators are responsible for ensuring that fair procedures are followed, particularly in cases where a student is to be expelled or suspended from school. Under a 1975 decision of the U.S. Supreme Court, a student cannot be suspended unless he is first told the reason for the suspension and given a chance to tell his side of the story. If he denies the charges against him, he must be told what evidence the school has to support its intention to suspend him. In another 1975 decision, the Supreme Court determined that school board members and other officials may be liable for money damages if they interfere with the basic constitutional rights of students.

Most principals and educators are well aware of these changes in the law* and have no desire to interfere with the legitimate rights of students. Most students accept educators' authority to make and enforce school rules; more and more, students are being involved in creating those rules.

The opportunity to get an education requires a certain degree of order, backed up by disciplinary powers. If this idea bothers you, try imagining all your classes being held in a crowded, unsupervised football stadium. In a sense, the purpose of school discipline is to protect the student's rights to receive the education offered by the school. While the courts, the Congress, and state legislatures have moved to recognize the rights of students as citizens in recent years, they still acknowledge the school's responsibility to set appropriate limits to student behavior. Striking the balance between students' rights and the need for order and safety is the hard part.

Students in Double Jeopardy

John Wall, a junior at Bennett High School, was found in possession of one ounce of marijuana while on school property. The marijuana was turned over to the police, and John was suspended for violating the school rules against possessing illicit drugs. Yesterday, John was arrested by the police. He has been told that he will be prosecuted for possession of marijuana.

Anyone who has ever watched television's numerous crime and "lawyer" shows is probably familiar with the term "double jeopardy"—being tried for the same crime twice. John has already been "prosecuted" by the school; can he now be prosecuted by the courts?

Double jeopardy is a violation of the Fifth Amendment to the U.S. Constitution, as interpreted by the U.S. Supreme Court. The Court has declared that individuals have the right to protection from "the hazards of trial and possible conviction more than once for an alleged offense."

However, double jeopardy principles have some important exceptions. A person *can* be tried for two crimes that the law considers different, even if they are very closely related. For example, a person found selling drugs can be tried for both *possession* and *sale*. The acts of possession and sale are considered different enough to be considered separate crimes.

Let's go back to John Wall. The law allows both his criminal prosecution by the courts and his suspension by the school. Many legal authorities have criticized this principle, but it is almost always followed in school cases, especially those involving drugs.

Another example: Mary Trask, age 16 and a star track and basketball player on school teams, is caught in the act of buying wine with false age identification. She is awaiting trial, but meanwhile both coaches have decided that Mary should be dropped from their teams, on the grounds that she is a bad influence and example for the other players. Even though Mary is being "punished"

*As part of its job, the principals' association keeps its members informed of changes in the law as they affect education. The laws affecting control of student conduct are explored in detail in *The Reasonable Exercise of Authority II*, available for $3.00 (prepaid) from NASSP.

twice, the courts do not consider the coaches' action a legal issue.

In a related college case, a group of New York City college students challenged the school's authority to discipline them for possession of drugs in their dormitory room. They claimed that if they were later found guilty in court, they would have been subjected to double jeopardy. The court ruled that the school's action was legal and that the school was not required to await the outcome of the court case before taking disciplinary action.

A similar decision was reached in a California case, in which the court recognized that the *purposes* of criminal authorities and the college in punishing students were different, stemming from their different roles. The fact that some acts might be prosecuted by both school and criminal authorities because those acts were both *illegal* and *distruptive to the educational process* was regarded as coincidental—not as a case of double jeopardy.

Question of Jurisdiction

Perhaps the real issue in these and similar cases is not a question of double jeopardy but of whether the school should have jurisdiction over certain kinds of acts in the first place. What happens inside the school or on school grounds *does* affect the school and its students—for example, the open sale of drugs in school hallways. But what about students who commit illegal acts off school grounds, like Mary Trask in the example above?

Many school systems have rules that permit such disciplinary actions, and the courts have generally supported them, especially where drugs are involved. The theory is that even off-campus drug use has a direct and immediate effect on the school's general welfare, a generally accepted criterion for the school's jurisdiction over students's actions.

However, some courts have followed the argument that a criminal conviction for an off-campus act should not, in and of itself, be the basis for school disciplinary action. For example, if Mary Trask showed up in school drunk and disorderly, the school could show that her action *did* affect the general welfare. But, does the act of illegal purchase of alcohol—off campus—fall within the school's jurisdiction? This question is yet to be answered in the courts.

Student Records

Privacy has been a subject of increasing concern throughout American society in recent years. One particular focus is the privacy of students in regard to the use of their school records.

In July 1973, an advisory committee to the U.S. Department of Health, Education, and Welfare (HEW) published *Records, Computers, and the Rights of Citizens*, a report that established some safeguards that have become basic to everyone dealing with record-keeping institutions. It stated that a person should be able:

- to find out what information about him is in a record and how it is being used.
- to prevent information that was obtained for one purpose from being used or made available for other purposes without his consent.
- to correct errors in any record of identifiable information about him.

Congress Acts

In August 1974, Congress extended the HEW advisory committee's recommendations to student records through a bill known as the Buckley Amendment, (named for former Senator James Buckley of New York, who introduced it). The Buckley Amendment became the Family Educational Rights and Privacy Act (FERPA); after several changes and a long process of preparing regulations to implement the act, it went into effect on June 17, 1976.

Privacy Act Requirements

The law and its administrative regulations run many pages. Basically they guarantee parents and 18-year-old students access to school records concerning them, and control access to student records.

The privacy act applies to all school systems receiving federal education funds and requires the school to develop and publish a student records policy so that all parents and eligible students will know their rights. The most important requirements state that parents and 18-years-old students must:

- be informed of the kinds of records that are kept.
- be permitted to inspect and review any material that pertains to themselves or their offspring.
- be able to obtain a copy of material in the record at a reasonable cost, if it is not practical to supply them with the original material.
- receive a response to a reasonable request for explanation and interpretation of the records.
- have the right to challenge a record if they believe it to be false or misleading material and to a fair hearing if no change is made after the record has been reviewed.
- be allowed to place a statement of rebuttal in the challenged record if no change is made.

Under the act, parents and 18-year-olds may file a complaint with HEW if they believe any of these rights have been violated.

Who Can See Them?

The Family Educational Rights and Privacy Act means that information about students cannot be given out

without the knowledge and consent of the student concerned. If the parent or student has no objection, release of information is permitted.

The law has some limitations. It does not cover the release of records to persons *within* the school system who need them. State and national government agencies that administer education programs may also see student records without consent. Any records may be forwarded to schools to which a student transfers or applies without prior consent, as long as notice of the release is given.

Effect of the New Law

The sole penalty for violation of the new federal law is cancellation of federal funds—but certainly no school employee who causes such action, or even the threat of it, will be warmly regarded by a school board. In addition, some states are enacting similar laws, with additional remedies provided. And individuals harmed by release of information contained in their school records may still initiate private legal actions.

Editor's note: A more complete explanation of FERPA and its interpretation is provided in NASSP's Legal Memorandum, The Confidentiality of Pupil School Records, *dated September 1976 and available from NASSP Publications Sales, 1904 Association Dr., Reston, Va. 22091, for 50 cents per copy (prepaid).*

Specific Issues

The previous section included articles on the procedural rights of students. In this section, the articles get down to some of the nitty-gritty issues affecting students. Should students be allowed to smoke on school grounds? Should they be expected to conform to hair and dress codes? What patriotic observances are students expected to participate in?

Topics regarding the controversy over teaching sex education, some of the provisions of Title IX (the federal anti-sex discrimination law), and the freedom of speech limitations that affect student publications are also covered in these articles.

Smoking in the Public Schools

"Whose business is it if I smoke or if I don't? They're my lungs!"

That's the reaction of many students in schools where smoking is banned or restricted. However, the reasons for regulating smoking in schools go beyond any one student's personal business. They also go beyond the control of many principals, including those who would be glad to stop policing bathrooms, locker rooms, and halls for student smokers.

State and Local Laws

Some states have laws that forbid smoking in areas where food or beverages are stored, including school cafeterias, and most states have laws prohibiting the sale of tobacco to minors. Twelve states make it illegal for minors, including high school students under 18, to smoke at all.

Many local fire ordinances prohibit smoking in publicly owned buildings.

Health and Welfare Issues

Many medical authorities have been critical of school administrators who provide smoking areas for students. For example, former U.S. Surgeon General Jesse L. Steinfeld has said that the presence of smoking areas in schools implies an encouragement to smoke, and "is not in the best interests of our children or of our citizens."

Public school officials also have a clear-cut responsibility to protect the welfare of their students. Principals and superintendents who permit smoking in schools may face severe criticism and even legal action by non-smoking students and parents who don't want their children exposed to cigarette smoke.

School disciplinary actions against smokers have generally been upheld by courts, except where laws have been shown to be "unreasonable" or unfairly applied. In no case has a court said that the prohibition or regulation of smoking in schools violates a constitutional right or is otherwise illegal.

Yes, No, Maybe?

In spite of criticism from the medical profession and parents, many schools have approved smoking areas on school property, if only to provide an alternative to fog in the lavatories and butts in the corridors. However, some state laws prohibit even restricted smoking areas.

In its 1972 *Legal Memorandum Concerning Smoking in the Public Schools*, the National Association of Secondary School Principals concluded that ". . . student smoking lounges may . . . promote smoking in the public schools," and that intensive educational programs should be established to make students aware of the dangers of smoking. The principals' association also recognizes the need to involve students, faculty, parents and the community at large in deliberation on smoking in the schools.

Student Responsibilities

A New Look at Student Responsibilities

The American high school and its educational environment were the subject of at least six major studies during 1975. One of these is *The Adolescent, Other Citizens, and Their High Schools: A Report to the Public and the Profession*. (Mc-Graw-Hill, New York, N.Y., 1975). The *Report* is the work of a 12-member task force, composed of leaders in secondary education and established by the Kettering Foundation.

In the past decade, student rights have received a great deal of attention. The Kettering task force agrees fully with the need to recognize these rights as they have emerged through the courts with appropriate administrative action. However, the task force states that schools "will not improve significantly unless individual student rights are balanced with individual student responsibilities to the school and society."

Student responsibilities have been viewed with mixed feelings by some students, who see them as a "catch" or even a barrier to progress in student rights. Responsibilities, on the surface, are less exciting than rights; they

imply work, attention to detail, and, to some, a restriction of freedom. Also, student rights issues engage people's sympathies for the underdog—for the "oppressed" students who are struggling to gain recognition of their rights. Meanwhile, responsibilities have received far less attention.

Rights Without Responsibilities—Only Half the Game

However, many students and educators realize that rights without responsibilities are only half the game—that students without responsibilities have only half the powers of citizenship. Educators often speak of "giving" or "granting" students certain rights, putting students on the receiving end in a passive role. Responsibility is the active exercise of freedom; it means making choices and standing by them and taking action that helps oneself and/or others.

Even babies have certain fundamental rights under the law that cannot be taken from them, even by their parents. But only those with "capacity" (for control of their own actions) are regarded as responsible under the law. This is the real meaning of *majority*, and the recent recognition of its attainment at 18 instead of 21 is equally a recognition that American youth can accept responsibility earlier today than they could formerly.

In recognition of this aspect of student responsibility, the Kettering task force recommends:

> That each high school further the opportunity for citizen involvement by establishing a committee composed of students, teachers, administrators, and community representatives broadly chosen for the purpose of identifying, posting, and widely disseminating in the school's literature the responsibilities students are expected to accept.

What Kinds of Responsibilities?

What these responsibilities will be in a particular school is up to that school. The task force was impressed favorably, however, with a document prepared by a group of students, parents, teachers, and school administrators for the Michigan State Department of Education and included its principles in its report.

Each student has a responsibility:

- to observe the constitutional rights of other individuals, whether they are students, parents, teachers, school officials, or other participants in the educational process.
- to respect the inherent human dignity and worth of every other individual.
- to be informed of, and adhere to, reasonable rules and regulations established by the board of education and implemented by school administrators and teachers for the welfare and safety of all students.
- to recognize individual and cultural differences and work to acquire knowledge as to how to use those differences for the improvement of society.
- to dress and appear in a manner that meets reasonable standards of health, cleanliness, and safety.
- to maintain the best possible level of academic achievement.
- to refrain from libel, slanderous remarks, and obscenity in verbal and written expression; all students engaged in school media programs should state explicitly on all media produced that the opinions expressed are not necessarily those of the institution or of the student body as a whole.
- to develop and undertake a social commitment to and for school and society.
- to observe, know, and adhere to the laws of the state in which he or she resides.
- to preserve school property, exercise care while using school facilities, and help maintain and improve the school environment consistent with laws governing such property.

Some might not find this particular list of responsibilities to their liking, but it provides a starting point for discussing a subject that deserves a lot more attention than it has received.

Freedom of Speech

Freedom of Speech—With Limits

Freedom of speech and expression is a fundamental and cherished right, protected by the First Amendment to the U.S. Constitution. In recent years, courts have made it clear that this right belongs to students as well as to other citizens—but with some limitations. Those limitations have been a source of confusion and misunderstanding when interpreted by students, school administrators, and others involved with schools.

Usually, the limitations on free speech and expression fall into one of these categories:

- *false or malicious (intended to harm) statements about a person or group.* In print, such statements are called libel. For example, the editor of your local newspaper calls the mayor a thief in an editorial. A student reporter calls the principal "incompetent."
- *statements that are intended—or even likely—to incite violence against others.* In a famous case, Supreme Court Justice Oliver Wendell Holmes declared that no one has the right to shout "Fire!" in a crowded theater. In schools, this limitation also includes any statement that would disrupt students' education, calling for a walkout or sit-in for example.
- *obscene statements.* Definitions of obscenity vary widely from one community to another and even among members of the same household. One common definition is sexually explicit or erotic material.

Distributing Student Publications

Distribution of student publications has caused nearly as much controversy as decisions about their content. School officials in some areas place tight restrictions on the distribution of non-official student publications. It is still unclear whether or not distribution of a publication can be totally prohibited solely on the basis of its content and whether school officials have the right to review and/or censor publications before they are distributed. A word of caution: students who publish false or malicious statements, statements that might or do lead to disruption, or obscene statements may be subject to a fine or other legal action—even if the publication was distributed according to school rules.

The courts have generally agreed that school officials have the right—and even the duty—to make reasonable regulations governing the time, place, and manner of distribution of student publications. They may, for example, prohibit students from selling newspapers in the halls during classes, or from handing them out in areas that might become congested and dangerous as a result. On the other hand, school authorities can't prevent distribution on these grounds unless disruptive or dangerous conditions would result.

How To Avoid Problems

Questions about the content and distribution of student publications are often difficult for students and school officials to answer, but the job can be made easier if both groups come to a prior agreement on some rules. Waiting until a publication has aroused hot tempers or has been confiscated by an irate school board won't help anyone to make a wise, just decision. One important principle that most court decisions have supported is to provide for quick review by the administration and for some avenue of appeal by students.

The Journalism Education Association, a professional organization of journalism teachers, adopted a position paper on student publications in 1974.

Among the main points were:

- Students share the news media's First Amendment rights regarding controversial and crucial events in the school, community, nation, and world. They also share the responsibility to refrain from publishing obscene or libelous material or material that poses a "clear and present danger of immediate material and substantial disruption of the school."
- Schools are expected to provide a qualified journalism teacher who can help make students aware of First Amendment rights and responsibilities.

NASSP's Legal Memorandum on Student Publications *is in the process of revision, and should be available in 1977.*

The Reasonable Exercise of Authority II, *another NASSP publication, includes information on legal issues affecting student publications and administrative decisions related to them.*

Hair and Dress Codes

"Sideburns may not extend below the lowest point of the earlobe."

"When in a kneeling position, skirts must fall within two inches of the floor."

"No sleeveless shirts (tank tops) may be worn by male students in the school building."

What's the law on hair? On halter tops? Although many jurisdictions have already ruled on these questions, hair and dress code issues continue to be heard in court.

Too Short, Too Tight, Too Transparent

Once it was pretty clear—and rarely challenged—that school authorities could establish regulations on student dress, so long as the rules had a reasonable purpose and were fairly administered. Modesty, safety, and protection of school property (by forbidding steel cleats on shoe heels, for example) were all regarded as reasonable. Besides, courts of the 1950s and early 1960s were generally unsympathetic to students' complaints about school rules.

Today's courts are more willing to listen, but they still support school dress restrictions if the school can prove that they are "reasonable." However, the rules must be based on better grounds than someone's idea of what girls or boys "ought" to wear or the fact that a school official doesn't "like" jeans.

Some items involved in recent court cases have been slacks and shorts (female students), blue jeans and overalls (anyone), tank tops (males), and anything that is too tight, too short or too transparent. Most courts still back up school rules that are designed to ensure some minimum degree of modesty—if not to prevent arrests for indecent exposure, then at least to prevent "disruption of the educational process."

Even in schools without a formal "code," the principal has authority to impose restrictions for the reasons given above, as long as they are applied fairly. Most school systems prefer, however, to develop a written dress code, often with student participation, so that everyone can know what's expected of them.

The War on Hair

If restrictions on student dress have been the source of school battles, hair has been the basis of outright warfare. It appears now as if the wars are dying down—but there are no clear victors. In some areas of the country, it seems that students have won, not so much because of victories in court as because school authorities have given up the battle.

If a school's reason for regulating the length of boys' hair was to prevent disruption, it became difficult to defend the rule when a third of the boys wore their hair long. In some schools, the appearance of a boy with a crew cut might have been the cause of a disruption!

Hair length and style *can* be regulated if the purpose of such rules is reasonably related to the health or safety of students or the protection of school property. Restrictions have been permitted where students work with machinery or where long hair might cause damage to swimming pool drains. However, in these cases, the courts have often accepted hair nets or bathing caps instead of requiring haircuts.

Federal Courts Don't Agree

The most difficult cases have come up when schools have claimed that males' long hair (and sometimes beards or moustaches) disrupts students' education. Some students have claimed that such rules interfere with their constitutional rights.

About half of the Federal courts of appeal have refused to hear student complaints on hair that are based on constitutional rights. The others have accepted students' constitutional claims and ruled that the school districts' hair regulations were not important enough to override them.

Generally, the U.S. Supreme Court will take a case if the federal courts of appeal disagree on the issue involved. However, the Supreme Court has refused every student "hair" case brought to it, so the question remains open to argument. However, the Court has ruled that a local police department forbidding hair to go over an officer's collar was permissible. The decision in thise case may have an indirect bearing on school hair regulations.

Meanwhile, many schools have decided to forget the whole thing, and hope it will go away.

Student Marriage and Pregnancy

Student Marriage

As early as the 1920s, courts began to recognize that marriage was not a sufficient reason for forcing students to leave school. However, participation in extracurricular activities was not given much attention, because the activities were considered as "extras," and participation as a privilege rather than a right. Few people even asked whether there was any real reason to exclude married students.

In the early 1960s, however, the courts began asking. Some lawyers and legislators, having read what many educators were saying, even pointed out that out-of-class activities were as much a part of the student's education as his classes. Therefore, they said, students' opportunity to participate in them should also be guaranteed.

In a 1971 Indiana case, a married male student challenged a school board rule that barred him from the football team. The state athletic association supported the school board, claiming that (a) the rule had minimal impact because football was not part of the curriculum; (b) married students needed more time for family responsibilities; (c) the rule prevented "undesirable interaction" between married and unmarried students; (d) the rule helped to discourage early marriage.

The federal district court ruled in favor of the student. One important reason was that opportunity denied the student might result in financial loss, such as an athletic scholarship. Most courts are now taking similar positions.

Apart from possible financial loss, however, many courts do not consider married students' participation in extracurricular activities to be a "fundamental interest" or a basic right. In such cases, the student often loses. Some courts, however, may strike down restrictions on the ground that the *right to marry* is itself a fundamental interest that cannot be abridged by a school. In such cases, the school must prove that married students' participation would cause serious problems for other students. Schools are very rarely able to meet this strict test.

The tide seems to be running in favor of full participation of married students in school activities, in class and out.

Pregnant Students

It is easier for school authorities to claim that participation in extracurricular or even regular school activities may present a danger to the pregnant student. There has often been strong public pressure to exclude unmarried, pregnant students, and it has usually been supported by the courts. Often, however, exclusion of pregnant students—married or unmarried—has been permitted *only* when an alternative opportunity for continuing education is presented.

Sometimes supervised home study has been the alternative, but in other districts pregnant students and even unwed mothers who have already given birth have been required to transfer to special schools or adult evening classes solely on moral grounds. Decisions upholding this kind of rule are still being rendered, but they are becoming less common.

Because most courts take the position that an unwed mother deserves the opportunity to receive an education, they are in general agreement that she should not be excluded without opportunity for a fair hearing. At such a hearing, the school must demonstrate that the pregnant student's attendance would endanger her own health or safety or have a disruptive effect upon the school. Many courts agree that the presence of an unmarried student in the final months of pregnancy is a sufficient source of disruption to justify temporary exclusion.

Title IX—What Effects?

The enactment of Title IX, (the "anti-sex discrimination" law) of the Education Amendments of 1972 has added a new dimension to the question of how married

or pregnant students may be treated. While the law itself is silent on the issue, the regulations provide that schools covered by the law (those receiving federal assistance) "shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex."

Title IX also prohibits discrimination of any kind in regard to curricular or extracurricular activity on the basis of pregnancy or childbirth. Separate programs for unmarried mothers or pregnant girls are permitted, but participation in them, whether as an alternative to or in addition to regular programs, must be voluntary. Pregnant students can be required, however, to obtain certification from a physician of their physical and emotional ability to participate in the normal educational program or other activity involved.

It is too early to know exactly what effects Title IX will have upon the situation of secondary school students who marry, become pregnant, and become mothers, but it seems likely to be a setback to those who want to exclude them from the regular activities of public schools.

Patriotic Observances

Patriotism—What May Be Required?

Marked by the birthdays of two of our greatest political leaders, February is our most "patriotic" month. In 1976, our 200th birthday included many patriotic observances.

Some legal questions have arisen concerning patriotic observances in schools—especially the pledge of allegiance and salute to the national flag. The issue usually comes up in a school that has a regular ceremony, either in classrooms or at an assembly, in which everyone is asked—and expected—to deliver the pledge and render the salute. Everything goes smoothly until a student refuses to participate and the teacher and the administration become adamant. If no one backs down, everyone may wind up in court.

The situation is further complicated when the student and his parents argue that their objections are based upon religious beliefs, as happened when the issue first reached the U.S. Supreme Court in 1940 *(Minersville School District vs. Gobitis)*. The children involved, only 10 and 12 years old, refused to salute the flag because their religious group, Jehovah's Witnesses, claimed that rendering the salute violated the Biblical admonition against making and serving "graven images." Basing its opinion on the theory that "national unity is the basis of national security," the Court reversed the lower court's ruling in favor of the Gobitis family and decided that the school could compel the salute on penalty of expulsion.

World Events Affect Legal Decisions

The Supreme Court is supposed to determine the cases that are brought before it purely on the basis of the law, but there can be little doubt that, like all other human institutions, it is affected by the events and circumstances of the time. The *Gobitis* decision is a good example of this fact. Clearly, the outbreak of World War II in Europe affected the court's decision that the need for patriotism outweighed the concern for individual liberty at the time.

Three years later, however, the Court was faced with the issue again when another group of Jehovah's Witnesses refused to obey a resolution of a state board of education requiring all teachers and pupils to participate in the flag salute *(West Virginia State Board of Education vs. Barnette)*. Despite its recent decision in *Gobitis* and the Court's great reluctance to directly overrule its previous decisions, the Supreme Court affirmed the lower court's decision in favor of the students and their parents, overruling *Gobitis*. The legal bases for the Court's decision were that: the Fourteenth Amendment protects citizens against state action that interferes with their individual rights as stated in the Constitution; that such rights were involved in this case; and that, in these circumstances, the state would have had to prove a "clear and present danger" to justify its enforcement of the resolution. This it was unable to do.

There seems little doubt that current events and political philosophy played an important role in *Barnette* also. At the time of *West Virginia State Board of Education vs. Barnette* (1943), the war was still on and victory was still in doubt. However, the Court was concerned with the apparent paradox of fighting such a war to preserve individual freedom while denying its exercise at home.

The Court went beyond the argument in *Gobitis* by ruling that the state board's rule could not stand—*regardless* of the nature of a student's objection. The state's interference was unconstitutional because it violated not only students' freedom of religion but also their fundamental right to freedom of thought. As stated by Justice Jackson: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force a citizen to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us."

Where Do We Stand?

In the more than 30 years since the *Barnette* decision, states have seldom been able to persuade courts that they have a right to compel an individual to take part in patriotic ceremonies. Courts in several states have recently ruled that neither students nor teachers can be required to stand during the pledge of allegiance and salute to the flag, since standing is considered a part of the observance. Nor can a student be required to leave the room during the ceremony if he refuses to participate, for such a requirement is a kind of punishment for nonparticipation. However, students may leave voluntarily.

On the other hand, the courts are in clear agreement that the school has the right to conduct patriotic ceremonies, and that no one has a right to disrupt them or in any way interfere with the rights of individuals desiring to take part in them.

The key element is that every American has the right to believe as he wishes. As one judge said of a student who refused to take part in the pledge in a recent case, "In time, perhaps, he will recognize that such protection is sound ground for a firmer trust in his country." (*Goetz vs. Ansell, 2nd Circuit; 1973*).

Compulsory School Attendance

Most school officials and students are bound by laws compelling school attendance. Every state except Mississippi has a statute requiring young people of specified ages to attend an approved educational institution. Most states include ages seven to 16.

All of these statutes provide for exceptions to be made by local school districts, but the rules governing such exceptions are tightly defined and closely administered. The most common exception is for children who have completed a satisfactory level of work at a certain grade level (usually the eighth), who have attained a particular age, and whose parents agree that they should go to work. Exceptions are also authorized for people who are mentally or physically incapable of attending school.

Enforcing Attendance Laws

But, for the vast majority of young people, the law requires school attendance. Failure to comply with the law is backed up in most jurisdictions by fines against parents or guardians—up to $200 for each offense. If a parent or guardian persistently refuses to see that children attend school, a number of states even prescribe jail sentences, from one to 90 days.

The laws usually place the responsibility for enforcing attendance on the school district, and many statutes require school boards to employ an attendance officer or supervisor, who manages the district's attendance records and investigates.

The attendance officer is often required by law or statute to use some rather stiff enforcement procedures. In 20 states, the officer must notify parents that the truant child must return to school, and nearly as many states require that violations be reported to the state attorney's office for prosecution. And, 19 states grant the attendance officer the power to arrest parents and take truant children into custody.

Why So Strict?

The first compulsory attendance law was enacted by the Commonwealth of Massachusetts in 1852, and other states followed. There were many reasons for the enactment of these laws. Probably most important was the recognition by the nation's leaders that the country needed an educated citizenry if it was to grow or even endure. However, many parents did not share this concern at a time when work was physically hard and seemed endless. They preferred to see their children join them in getting it done as soon as possible.

The growing concern to spare young children from strenuous physical labor became another strong force toward compulsory education laws. More recently, complex technology, the responsibilities of citizenship, and the knowledge required to be a successful consumer have led to demands to continue or even to extend, compulsory education.

Re-Evaluation Ahead

At the same time, there are signs that some educators' support for compulsory attendance in educational institutions is weakening. In 1973, for example, a majority of members of the prestigious National Commission on the Reform of Secondary Education recommended dropping the "formal school-leaving age" to 14. Other programs, they said, should accommodate those who wish to leave school, and "employment laws should be rewritten to assure on-the-job training in full-time service and work." The Commission also noted that earlier physical, sexual, and intellectual maturity among some young people today requires options for earlier departure from formal schooling.

Several state legislatures have already lowered the age limits for compulsory attendance (Florida, for example, where 14-year-olds who can pass a high school equivalency exam may leave school), or provided for easier access to early graduation.

Exemption for Religious Reasons

In the past, many courts heard cases in which families or religious groups have claimed that compulsory attendance laws violate their religious beliefs, protected under the First Amendment of the Constitution. Early courts struck down this argument, largely on the basis that the nation's need for educated citizens overruled the religious objections.

Since compulsory attendance laws have always provided that students may attend approved parochial schools as well as public schools, the courts felt that the parents and students already had an alternative. However, some parents still contended that public school attendance interfered with their religious beliefs. After nearly 50 years of defeat for these cases, the U.S. Supreme Court dramatically and surprisingly reversed the direction of the law in *Wisconsin vs. Yoder*, 1972.

The Court ruled that Amish children who had completed the eighth grade could not be compelled to attend school. The Court was careful to restrict its decision to the Amish, on the ground that they had not only shown that the law conflicted with their religion, but also that members of their group were demonstrably good and successful citizens, even without prolonged formal education.

Most legal scholars believe that the *Yoder* decision will not, therefore, provide a basis for others to contest compulsory attendance laws.

Sex Ed Controversy

Vigorous struggles have resulted in many school districts around the country between parents and citizens who believe sex education has no place in the public school and those who say it should receive more attention.

The public school curriculum is under the control of the state legislature, with most of this authority delegated to the local school board. There are, however, a few limitations. One is that the legislature itself may specifically prescribe or forbid certain things from being taught, with some states taking such action regarding sex education. But state and federal constitutions limit state legislatures and local schools boards from determining all that may or may not be taught.

Objections to Sex Education

As written in the First Amendment of the U.S. Constitution, the states are forbidden to make any law "respecting an establishment of religion or prohibiting the free exercise thereof." This religious limitation has frequently been the objection to attempts to introduce sex education into the public schools.

Where religious objection has been raised to any aspect of the curriculum, the courts have said that it could be offered, but only on a voluntary basis. This has been the way most objections to sex education have been handled by the courts.

Objection to sex education because it interferes with the free exercise of religion has usually resulted only in excusing those children whose parents raised the issue. Opponents of sex education have sought other grounds on which to oppose all sex education courses. Some have tried to argue that sex education is in violation of the "establishment clause" of the First Amendment, claiming that their religions include such teachings. This has not been a successful approach.

Voluntary Courses

Objection to the school board's offering of sex education material even on a voluntary basis, has been challenged on a variety of grounds other than religion. The board has been accused of:

- exceeding its authority;
- abusing its power of discretion;
- interfering with the privacy rights of the family and/or the students; and,
- interfering with other unnamed individual rights protected by the U.S. Constitution.

So far, none of these objectives to a non-compulsory offering have been upheld.

Less frequently, those desiring that more sex education be offered have gone to court. One challenge was raised to a state statute which forbids the teaching of any aspect of birth control in the schools, or the offering of any advice or information on the subject. The complaint was dismissed because the plaintiffs were unable to show any way in which they had been injured by the law. This opinion of the Michigan Supreme Court was sustained on appeal by the U.S. Supreme Court in 1975.

The more successful route—to get either more or less sex education into the curriculum—has been by persuading the local school board of the need for change. That, however, is not the business of the courts, but better left to the people of the community to decide.

Title IX— Ending Sex Discrimination

One of the facets in the continuing struggle for female equality has been the demand for the elimination of any kind of gender-based discrimination in the public schools. Early efforts took the form of court suits based on the denial of equal educational opportunity under the Fourteenth Amendment of the U.S. Constitution. Now, however, federal law, as well as the Constitution, forbids discrimination based on gender.

Included in the 1972 Education Amendments, Congress enacted Title IX, which prohibits sex discrimination. After two years of preparation, review, and public comments, final administrative regulations implementing the law were adopted by the Department of Health, Education and Welfare. These regulations became effective on July 21, 1975. More than a year later, many of the issues originally troubling educators throughout the country have been clarified. Although questions continue to come up, the basic outlines are clear.

Title IX

As far as students in public schools are concerned, the general intention of Title IX is that no student shall be excluded from participation in, denied the benefits of, or be subject to discrimination under any education program on the basis of their gender. Violations are punishable by termination of federal financial assistance to the schools.

Limitations

There are a few exceptions and limitations in the law itself. It does *not* apply to *admissions* to primary and secondary schools except for vocational schools. In other words, Title IX permits the operation of separate boys' and girls' schools. If both sexes are admitted, then all admission practices, including recruitment and scholarship aid, must be administered in a non-discriminatory manner.

Another limitation is that schools are not required to grant preferential or different treatment to the members of one sex on account of any imbalance which may already exist in any program or activity.

Title IX has been interpreted to apply not only to official school-sponsored activities, but also to any program or activity of an organization or person seeking use of school property or other school assistance. In 1974, however, Congress amended the law to specifically exempt the Boy Scouts, Girl Scouts, Campfire Girls, YWCA, YMCA and similar youth service organizations. In 1975, another amendment exempted the American Legion-sponsored Boys and Girls State and Nation Programs, and the holding of separate father-son or mother-daughter school activities, as long as both sexes have "opportunities for reasonably comparable activities." The demand for these exemptions arose in response to interpretations of the law, which prohibited the carrying out of any education program or activity *separately* on the basis of sex. While many persons and groups have objected to this interpretation, it continues to be the government's position.

The regulations cover a wide variety of educational matters, but the primary emphasis concerning students is that all:

(1) have equal access to, and participation in all course offerings and extracurricular activities;

(2) be equally eligible for and receive enjoyment of benefits, services, and financial aid; and,

(3) have equal or comparable use of all facilities.

While "equal" is usually defined by HEW to mean "coeducationally," the regulations do make a few exceptions. Most notably, these are in connection with sex education and physical education. In regard to sex education, classes may be conducted separately, but only when the specific subject under study is human sexuality. In P.E., separate classes are permissible only during participation in contact sports. Separation by ability is also permitted as long as the standards used are objective and not based on sex difference.

Extracurricular athletics have been another area of student activity which has been the focus of many questions about Title IX. The law requires that no one be excluded from either interscholastic or intramural sports on the basis of gender. This is interpreted to mean that teams will not be organized on a separate sex basis. But, the regulations permit separate teams if the activity involved is a contact sport.

Even in contact sports, both sexes must be permitted to try out for the team if separate teams are not available. A team made up of members of only one sex is permitted in any sport if it results unintentionally, and opportunity to try out was fairly offered to both sexes.

Specific issues will continue to arise under Title IX, and further changes may even be made, either by regulation or legislative amendment. But so far, few challenges to the law have been taken to court, and none have been successful.

Brown Bagging with Federal Funds

Brown Bagging

Until recently there has been little controversy over the National School Lunch Program, which provides federally subsidized lunches for millions of students. In 1973, however, students became concerned when they were told that federal law prevented machines from operating during school lunch hours.

Vending Machine Controversy

Regulations by the U.S. Department of Agriculture, which administers the program, did limit school cafeterias from selling food in competition with the federally-aided school lunch program. The regulation was to prevent students from being tempted to buy and eat food other than the nutritionally balanced meals provided by school food services under the federal program. But some Minnesota students complained that the regulation prevented the sale of apples from a vending machine in the school. The students didn't think this encouraged eating nutritionally deficient food.

Under the National School Lunch Program the U.S. government subsidizes lunch every day for millions of students throughout the nation. The total cost of the program to the federal government amounts to nearly $2 billion per year. The federal government spends only slightly more than twice that amount for elementary and secondary education itself, yet, most Americans know little about school food programs.

At the time of the Minnesota student protest USDA regulations also required that proceeds from the sale of food outside of the school lunch program go into the general school food service fund. The money could not be used as a source of revenue for student group activities such as the purchase of band uniforms. Elimination of these revenues caused considerable consternation to the groups which would have benefited from these funds, as well as to other students and school officials who saw the regulation as an undue federal interference in local school affairs.

The students brought their concerns to the attention of their congressman, Albert Quie, (R-Minn.), who was also the ranking minority member of the House Committee on Education and Labor which oversees the school lunch program. After investigation of the students' complaint, Quie introduced an amendment to the law preventing the USDA from prohibiting the sale of competitive foods in school cafeterias.

While the amendment was adopted by the Congress, the change in the federal law does not prevent the state government from enacting or otherwise establishing similar prohibitions in the school lunch programs within their states. A number of states have, in fact, established such limitations.

Wasted Food

In 1976 another criticism of school lunch programs surfaced in the Congress. A number of persons, both students and others, complained that great amounts of food were being wasted in the program. The primary reason for the waste turned out to be a federal program requirement that each student receiving a lunch be given a standard helping of each of five basic food elements, whether he wanted it or not. Failure to do so could result in the loss of some federal assistance to the school under the program. Unfortunately, many students did not want, and would not eat, all of the food served.

The rule was intended to assure that each student received a nutritionally well-balanced meal. But the critics pointed out that it made little sense to *serve* food, if it was not eaten and was only thrown away. When the value of the food wasted was estimated to run as high as $400 million, Congress acted. The legislation was amended to permit secondary school students to refuse any two of the five basic elements of the standard school lunch without loss of financial credit to the school. (This choice was not permitted to elementary school students on the ground that young children should be encouraged to eat nutritionally balanced meals.)

The school lunch program and the other institutional food programs which have evolved from it have become a large and important part of federal government assistance to local communities. They provide one-third or more of the total sustenance for millions of persons, and employment for tens of thousands of workers. But recent changes demonstrate the need for continuing review and monitoring by educators and others affected by these programs to assure that they avoid waste and achieve their real objectives.

Organizational Issues

A number of legal issues have arisen affecting the rights of students to participate in groups such as the student council, or the local school board. Other issues concern the powers student organizations have.

Three topics affecting students were covered in the January through March 1975 "Student & the Law" columns. These include the question of spending public funds for student activities, the rights of student councils, and the legal considerations that permit or prevent students from serving on school boards.

Use of School Funds

One problem which faces every student organization sooner or later—usually sooner—is *money*. Many members spend long hours thinking up and carrying out fund-raising activities, and the treasury still isn't as full as everyone would like. Then, someone comes up with an electrifying thought: why can't we get some money from the school system, so that we can devote all of this effort to our real purpose?

Of course, everyone knows that the school is already short of funds. But what money there is could be divided some other way, couldn't it? Then maybe at least a few hundred dollars could go to the student council... But this seldom happens. Why?

Use of School Funds

When the public school system got started in this country, the use of school funds was narrowly restricted to purposes that were clearly academic. As public education grew and changed, the concept of education came to include many extracurricular activities, and some states approved the use of public funds to support them.

Questions were raised by taxpayers, however, about some uses of school funds. In 1927, for example, a Phoenix, Arizona, citizen charged that construction of a high school stadium was an improper use of funds. The court disagreed, holding that physical education was a "necessary and proper function" of the schools, for which facilities like gyms and stadiums were appropriate. Similar suits have been brought against expenditures for repair of a stadium, purchase of athletic equipment and uniforms, and materials for other extracurricular activities. While decisions vary from state to state, few school systems are yet permitted to fully fund all extracurricular activities.

Perhaps the general rule was best expressed by the Attorney General of Virginia a few years ago in advising a county government about whether it could donate public funds to the school board for the purchase of band uniforms. The donation was legal, said the Attorney General, so long as the school board determined the purchase to be, "reasonably incident [connected] to the operation of the public high school program."

Even where spending public money for student activities is legally permitted, school administrators may decide to supply only part of the funds needed for a particular student activity, and require the school or the students to raise the rest.

Control of Student Funds

Another aspect of student organizations' money problems is what happens to funds that student groups raise themselves. To avoid misuse of such funds—such as someone running off with the proceeds of the student council dance—most school systems require that all funds be deposited with the school treasurer, who usually treats them in the same way as other public funds. In short, the money becomes part of the public funds. One court in Pennsylvania took this position on the basis that funds raised through any school organization are raised as a result of the school district's investment in building, equipment and personnel. If you don't have a school, you can't have school fund-raising activities.

Some other state courts have recognized a difference between school funds supplied by the public (taxes) and funds raised by students, parents, or other school-affiliated groups. But, even then, most have supported the right of the school system to require that such funds be placed under the school's control. The primary reason for this, of course, is the desire of the school district to provide security—and to avoid liability in case of loss or theft—for such funds. A South Carolina school district authorized a principal to assume sole responsibility for funds raised by students and teachers, but the state supreme court required him to account for the funds to the school district.

Finally, a recent decision of the New Jersey Commissioner of Education answered some additional questions about student activity funds. After paying for their senior trip, a 1962 graduating class had over $600 in class funds left at the time they graduated. They decided to use it to finance their tenth class reunion in 1972. In 1972, however, both the principal and the

superintendent of schools denied any knowledge of the project, and claimed that the funds in question had long since been merged with other school funds and spent for other purposes. While members of the class claimed that the principal (through his secretary) had approved the use of the funds for a reunion 10 years before, the school board said it had no legal authority to refund the money claimed by the class. The Commissioner concluded that the class funds were public in nature, and that the board's use of them was therefore legal.

The major objective of the law in regard to school funds of any kind is, of course, their protection. But in this case, as in some others, the students may have felt they were "protected" a little too well.

Student Council Rights

What are the rights or powers of student councils under the law? In light of widespread interest and legal consideration regarding student rights issues in the past decade, the short answer may be surprising: *unless there is a specific local statute, ordinance, or school board rule to the contrary, student councils really have no rights. The only powers they have are conferred upon them by the school.*

While students have certain rights under state and federal constitutions because they are citizens, those rights aren't transferable to student *groups*, like councils. Most state and local governments have never formally assigned any powers to student councils. While very few cases involving councils as a whole have been published through any legal reporting system, it will not be surprising if there are more in the near future.

"Free Speech" Issues Predominate

Of the cases so far, most have been brought by student council members or other students as individuals, rather than on behalf of the student council itself. In a recent California case, a high school student seeking the office of associated student body president failed to submit his nominating petition for approval the required one week before the election. The student was prohibited from speaking at the campaign assembly held the day before the election and from having his name printed on the ballot. The student obtained a temporary restraining order from a court, his name was printed on the ballot, and he was elected.

The student then urged that the requirement that written materials be submitted in advance be declared unconstitutional as a prior restraint of free speech. The court found that the school rule is not unconstitutional.

In another case, a student was prohibited from running for "co-president" of the student council by the principal after he wrote a letter in which he called the principal and the council contemptuous names and used obscene language. The student charged that the principal had violated the Civil Rights Act.

The court found that the principal's action was not discriminatory (i.e., "personal") and it did not fall under the provisions of the Civil Rights Act. Had the principal used his official powers as a public employee, the Civil Rights Act might have applied, but the court found that he had acted under a rule of the student council itself, which authorized him to decide questions of eligibility and specifically mentioned "disrespect," "insolence," and "lack of cooperation" as grounds for denial. *(Palacios v. Foltz, 441 F2d 1196 (1971))*

Seven Illinois high school students filed suit in a U.S. District Court on December 10, 1974, charging that school officials had violated their rights of freedom of speech and assembly by abolishing their school's student council and refusing to permit student council candidates to affiliate with a student political party. The students sought a permanent injunction against the school's action and claimed that the administration placed restrictions on the council that were not placed on other student organizations, taped students' speeches without their knowledge, and froze funds in the student council's account.

Councils Are Subject to School Law

Even though student councils are not considered legal entities, they fall under legal restrictions and responsibilities placed upon the school system and its administrators by state and local laws. The laws often contain clauses that prohibit school authorities from delegating some of their responsibilities. Even if the laws permit the principal to delegate responsibility, the legal liability usually remains with the principal or school board. So even though the student council or another student group may be given authority to plan a street parade, the school itself may have to apply for the permit—and accept responsibility for any injuries to bystanders that could have been foreseen by the planners.

Student leaders can help to avoid these kinds of problems by working closely with the principal and faculty. They should do so from the earliest stages of planning so that their time and effort are not wasted. The principal can advise students about what kinds of activities are legal—for example, a student council that prints tickets for a community raffle may find that local laws prevent them from holding it.

Clarify Council's Role

Another aid to student councils is a clear statement of the council's role and responsibilities. If students cooperate with administrators in developing such a statement, it should be possible for students to work as independently as possible without running into conflict or vetoes by the administration. It will also provide some support for the council should a disagreement later arise over any of its actions. Even where groups have no formal legal powers, as with student councils, American

law recognizes the responsibility of administrative units of government like public schools to observe their own rules and regulations.

But—don't get hung up on questions of legal power and authority. It usually isn't necessary. Most high school principals today *want* students to participate in the responsibilities of school life. And they recognize student councils and similar organizations as a means of such participation.

Students on School Boards

"Students should be able to serve on school boards. After all, they're directly affected by the board's decisions."

"As a student, I'm concerned about our schools. I feel I could represent student interests on the school board."

"School boards have a big influence in the community. Why shouldn't students share that influence? As a board member, I believe they should."

"They don't have the maturity to make major decisions about budget and curriculum. I believe we adults know what's best for our schools."

"I don't object to a student attending our meetings, but I do object to giving a student voting power."

These are just a few of the varying personal opinions regarding students on school boards. Although some states and districts do have students on their school boards, election and appointment procedures across the country reflect varying *legal* opinions.

State and Local Laws

Of the legal considerations that affect students serving on school boards, the most important are state and local laws. In some states, the requirements are spelled out in detail and may even include a minimum age.

More often, especially in larger communities, the qualifications of membership and even the method of selection is left up to the locality under "home rule" statutes. Board members may be elected, or they may be appointed by a mayor or city manager. Sometimes, the law requires that a slate of nominees be prepared and that the chief city or county executive choose board members from among them.

Against this background, it is easy to see why the results of students' efforts to obtain school board seats have been unpredictable or uneven.

According to most states' laws, anyone qualified to vote in a school board election is permitted to be a candidate in that election. For the most part, this requirement formerly limited candidacy to persons 21 or older, but most states have now reduced the voting age to 18 for local elections, following the lead of the Twenty-sixth Amendment to the U.S. Constitution. As a result, 18 years became the minimum age for election to school boards in most states.

"Maturity" is Big Issue

However, in New York state at least two attempts by persons under 21 at school board positions have wound up in court. In both cases, the candidates were elected by local voters. In one case, the school board did not accept the candidate's eligibility, and, relying on an opinion by the state attorney general, ordered the young person's name to be locked off the voting machines—without notice to the candidate or a hearing.

The state appellate court upheld the school board on the ground that the candidate's age was a critical fact that could not be changed and that any notice or hearing was therefore irrelevant. The court also stated that the Twenty-sixth Amendment had not been violated in the case.

In the other New York case, the court found that the school board had made a "judicial" decision beyond the scope of its powers in declaring the election of a person under 21 to be invalid.

Several years ago, a 15-year-old Ann Arbor, Mich., student filed to run for the school board there, in full compliance with the requirements for candidacy. Her candidacy was refused on the basis of a state statute requiring board members to be at least 18 years old. Suit was brought by the political party that the student represented, charging that the statute violated the Fourteenth Amendment's "equal protection under the law" provision by denying certification to a candidate solely on the basis of age. The suit also attempted to prevent the city from refusing to place the student's name on the ballot.

The court decided that the statute was reasonable and that, rather than violating the Fourteenth Amendment, it served the purpose of ensuring that board members would have sufficient maturity and legal knowledge to handle the board's business.

21, 18, or Younger?

To most high school students, a minimum age for candidates of 18 doesn't do much good—most of them are under 18 at the beginning of their senior year. In spite of many legal obstacles, though, there are high school students sitting on boards of education.

Even though the welcome signs are seldom out, there are indications that students can be placed on school boards legally—when the appointing powers want to place them there. In Fairfax County, Va., the county board of supervisors recommended that a student be appointed to the school board.

Citizens and school board members disagreed about a student's capacity to perform a board member's duties, and also about a possible conflict of interest that might arise if a student made policies that would eventually govern his own behavior. However, the state attorney general agreed with the county supervisors and a student took a seat on the school board. The student does not have the right to vote, but has all other rights and responsibilities of board members.

Beyond the School

Students are affected by many laws which extend beyond the walls of the school or its grounds. In some instances, when students are participating in off-campus, school-related activities, the school may still be responsible for the health and safety of the student. In other cases, local, state, or federal laws look after the student's welfare. Laws regarding youth employment, curfews, and contracts are among the issues discussed in this section.

Students and advisers should also be aware of legal protections they have as consumers. Two other articles cover warranties and guarantees, and who is responsible when something goes wrong on a student travel tour.

Age of Majority

In the past several years, more than 40 states have lowered the age of majority to 18 or 19 for most purposes, and it is likely that most other states will do so in the near future.

Why This Sudden Change?

There is, of course, nothing sacred in the choice of age 21 as the age of majority, but the number 21 has quite a weight of history behind it. The Province of Massachusetts Bay enacted a law requiring age 21 as the minimum for performing certain civic duties. By 1620, the age for serving in the English army had risen (over centuries) to 21, mostly because of the increasing weight of armor!

More important than the legal precedents for 21 as the age of majority are the reasons for the sudden change to a younger age by more than 40 state legislatures. Some of those reasons are:

- Sociologists, psychologists, and doctors have shown that young people are maturing earlier, both physically and mentally.
- A higher level of education among young Americans has made them more capable of exercising the rights and responsibilities of full citizenship.
- The 18-year-old draft made many people realize that a young person required to serve his country should have the right to help choose its leaders.
- The adoption of the Twenty-sixth Amendment to the U.S. Constitution, lowering the age requirements for voting in federal elections to 18, spurred many states to action. In states where the voting age for state elections was higher than 18, government officials faced administrative problems in elections where both state and federal officials were running for office.

What Does the New Age of Majority Mean to Students?

Most school rules and regulations do not depend on the age of the students for their validity. An 18-year-old senior is prohibited from consuming alcoholic beverages on school grounds, but so is a 35-year-old taking a night school drafting course, and, for that matter, a faculty member. However, some areas of school life *will* be affected.

- *Residency*. Generally, students have been required to attend the high school that serves the district in which his parents or legal guardian resides, although some married or self-supporting students have been allowed to attend school in the district in which they themselves live. However, residency for school purposes is often based on the student's residence on the date the school year opens; a student who becomes 18 in January of a school year may be bound to attend the school in which he was enrolled in September (when he was still 17.)
- *Student Records*. State laws on who may see which school records vary considerably, but the new age of majority may mean that 18-year-old students have access to the same school records their parents do. An adult student may also be able to prohibit the opening of his personal record to his parents.

It is impossible to predict what will happen to many specific regulations brought into question by a lowered age of majority, such as legal drinking age and students' rights in schools. Decisions on many issues are likely to be inconsistent from state to state. On some of the more complex issues, it may take several years for a consensus to develop.

What to Do in the Meantime

- Because reasonable rules may be applied legitimately to all students regardless of age, students should make an effort to separate what kinds of laws are subject to change under the new age of majority. Efforts to change school rules and regulations should be undertaken with this distinction in mind.
- Students should urge the development of curriculum or written materials on the legal rights and responsibilities of persons coming of age.

- In the areas of residency, release of student records, and securing of parental consent or acknowledgment, changes may be coming for students of legal age. New procedures will be needed to assure not only that the adult student gets his full legal rights but that no unfair discriminations are made against minor students.

The Long Arm of the High School

Through work-study programs, volunteer service opportunities, and individual research projects, high schools are providing more ways for students to get experience at jobs and other aspects of adult life than they used to. Most of these new opportunities take students off-campus, as do co-curricular activities such as interscholastic athletics and debate competition.

While most students know that the principal and the school staff have responsibility for and authority over them while they are on school property, the rules concerning off-campus school-related activities are not so well understood.

The general rule is that a school can adopt and enforce reasonable rules for student behavior during any part of its educational program—off-campus or on. In the past, schools frequently had authority over students in other areas as well. For example, a court ruling of 50 years ago upheld a teacher's right to punish a male student for annoying female students who passed by his family's property on their way home from school.

While schools today seldom interfere with students while they are not directly involved in school activities, their authority to do so is clear. More than 100 years ago, a court upheld a school's punishment of a student who called a teacher contemptuous names while passing the teacher's home with a group of friends. *The case still stands.*

The primary purpose of the school's rules regarding student behavior is to guarantee that students' education will not be disrupted and that students' health and safety will be safeguarded. For these reasons, students on off-campus school assignments are usually under the direct supervision of a teacher or other school staff member, as during field or class trips and on the school bus going to and from school. In these cases, students are expected to obey the reasonable directions of the school supervisor.

However, independent study and work programs often require that a student work alone on an off-campus assignment. Whether the student is working in an office or studying at a museum, the school's responsibility is considered to be less than when the student is off-campus with a group. It is not reasonable or practical to have a school staff member accompany individual students.

One area of growing concern is the school's responsibility for students who travel to off-campus assignments or school activities in private cars. Court rulings to date have not been consistent enought to allow a general statement on who is responsible.

In one recent Washington state case, a high school student fractured his ankle while being initiated into a school-sponsored student club. The initiation took place at a private home after school hours, but the court held the school liable, stating that the school's sponsorship implied general supervisory responsibility.

No matter who is held responsible, however, it is the student who suffers in case of an accident. The fact that new high school programs give students additional responsibility makes it more important than ever that they look out for themselves while working on off-campus assignments.

An NASSP Legal Memorandum titled Responsibility for Student Injury Occurring off School Property *was published in March-April 1975. The Legal Memorandum covers specific situations of concern to principals and student advisers.*

Minors and Contracts

John was annoyed when Alan Roberts, manager of the Submarine Diving School told him one of his parents would have to sign the contract for his scuba lessons. First, he was paying for the lessons himself out of money from his after-school job at the garage. Plus, he was 17, a senior in high school, and a good swimmer. So why involve parents? Didn't Roberts trust him?

Good questions—but maybe John's getting upset too soon and for the wrong reasons. The key work in John's situation is the word "contract" and the key fact is that John is 17 years old, a minor in the eyes of the law.

Long ago, society decided to make nearly all of a minor's contracts unenforceable against him or his parents. The purpose was to protect young people from employers or business people who might try to exploit them. If John defaults on his contract—say he quits after two lessons, owing Roberts $60—Roberts has no way to "force" John to live up to the terms of their agreement.

On the other hand, John *can* exercise his contract rights against Roberts. If John cancels—for any reason—Roberts can keep that part of the fee that corresponds to the lessons John has already received, but he must refund the balance—and take the loss.

As a result, very few merchants will sign a contract with a minor, especially one that requires future payments. Even if John pays cash for all the lessons in advance, Roberts may still want an adult to sign to protect him if John cancels and wants his money back.

There are a few exceptions to the principle that a minor's contracts can't be enforced against him. The law recognizes that minors who are self-supporting by necessity must be able to purchase food, clothing, shelter, and some other items, even if they don't have the cash. Contracts for these goods can be enforced against

minors, but no merchants is required to enter into such contracts if he doesn't want to.

Lowering the age of majority from 21 to 18 has eased the problem of contracts for many young people. Fortunately, most people under 18 today don't have to provide their own necessities. But for scuba lessons, cars, and other "non-essential" items, the law will probably continue to require an adult signature.

When You *Do* Sign a Contract

A contract is a formal agreement that includes an *offer* by one party and an *acceptance* by another. Contracts may be written or oral, but a written contract offers far stronger protection for both parties. Any promise for services to be delivered in the future (by either party) should definitely be in writing.

Sometimes, a seller offers a written contract that is incomplete. He may say, "We really don't need to go over all that fine print. If anything goes wrong with the bike in the next six months, just bring it in and we'll take care of it." This kind of oral "promise" is seldom honored by the courts. If it were written—and more specific about what "take care of it" means—the buyer would be much better protected.

The Street Law Project of Georgetown University Law Center in Washington, D.C., offers this advice on signing contracts:

- Never sign a contract with blank spaces (or "fill-ins").
- Never sign a paper to get rid of an irritating salesperson.
- Never sign a contract without getting a copy.
- Never sign a contract unless all promises are included and the total amount of money to be paid by you is clearly stated.
- If a *warranty* (promise to perform repair or maintenance services) is included or attached to the contract, it should be made explicit whether the seller will assume *all* of the costs, or the cost of parts only.
- Don't sign unless you read and understand the whole contract. If you are in doubt about any of the terms, a reputable seller will allow you to take the contract to a friend or lawyer or consumer agency to have it fully explained.

It's important to remember that a reputable seller will *want* a valid contract—one that states the obligations of both parties clearly.

Tours for Students

Spring and Summer Tours for Students

Every spring and summer, thousands of high school students take leave of their families and depart for study tours in Europe or other foreign lands. Generally, these tours are arranged by commerical tour operators, although often a non-profit educational organization sponsors or takes some other role in establishing the program. Finally, much of the actual supervision is provided by teacher-advisers, or other educational personnel, often from the school attended by the student participants.

What if Something Goes Wrong?

Usually, everyone involved has an educationally worthwhile and exciting experience. Occasionally, however, something goes wrong—someone sustains an injury, is left behind when the train leaves Zagreb, or just plain decides to stay in gay Paree. When such events occur, excitement can turn to panic. It is only then, unfortunately, that people begin to wonder about who may be blamed and who will be held liable. The tour operators? The sponsoring organization? The teacher chaperons?

Many teachers believe that, since the travel agency setting up the tour is a large and responsible business, they themselves are not responsible. All too often, quite the contrary is the case. The tour broker's knowledge of his business assures that, to the extent legally possible, the fine print in his contract relieves him of responsibility. The teacher or other educator serving as guide or chaperon may be forced to rely on the mercy and wisdom of the courts to judge his acts or omissions.

The easy answer may be insurance, both for teachers and students alike. Most tour operators make it available at nominal cost. If they don't, it is wise to ask about it. Often, of course, a policy of the school district or a professional association may offer protection to the adult tour leader, but it's best to find out before leaving —before a possible claim arises. Many policies are interpreted to exclude commercial tours, even if school-affiliated. Other are limited to incidents occurring within the United States.

Board of Education Approval—Good Idea

It is wiser for advisers and teachers to find out the attitude of their board of education toward participating in tours at all. Some favor it only if there is some relationship to the school curriculum, and if the board has assured itself of the competence and honesty of the tour operators. Even if these factors are satisfactory, many school districts frown on any attempt to publicize or "sell" tour programs to students, especially if the teacher stands to gain. Some tour operators offer a "free" trip to teachers who sign up the required number of students.

Making sure that the board checks out and approves foreign tours or study programs is also a good way for school staff to protect themselves against liability. Sanction by school authorities may cause the school district to share in any liability that results from injury or other mishaps. In school districts where employees are insured against damages incurred in the course of their employment, they stand a good chance of being protected; even in situations where only professional liabil-

ity insurance is provided, the likelihood that coverage would apply is far greater.

Another point to check is whether or not private health and accident insurance applies while out of the country.

As in all other cases involving school trips, the written consent of the parent for his minor child's participation does not nullify the minor's rights to sue and recover should he be injured by the negligence of another person. At best, it will only be regarded as evidence that the parent was aware of certain risks involved. Such knowledge might bar a suit by the parent, but rarely the minor child.

None of these dangers should be regarded as so serious as to discourage anyone from taking part in school-sponsored or otherwise related tours and trips, but the wise person tries to anticipate possible dangers and take account of them. Bon voyage!

Guidelines for selecting overseas study programs are included in Overseas Summer Study Programs: What Students, Parents, and Principals Should Ask, *available for 50 cents (prepaid) from NASSP Publications Sales.*

Federal Laws on Youth Employment

With unemployment high in many communities, summer jobs for students may be difficult to find this year. Complicating students' search for jobs are the many government regulations that affect the employment of people under 18 years of age.

Many of those regulations are found in state statutes and local ordinances, but federal laws apply even where local laws don't exist. Federal regulation of youth employment goes back to the early years of this century when news stories about 12-year-olds working 10-hour factory shifts shocked the conscience of America. Reacting against such abuses, Congress enacted child (minor) labor laws that are now part of the amended Fair Labor Standards Act of 1938.*

Most employers make it a point to know the laws governing the employment of minors, because they, rather than the young employees, are nearly always held legally responsible for violations of those laws. However, students who have a general knowledge of what the laws require or forbid can save themselves from embarrassment, frustration, and waste of time in seeking jobs for which they can't legally be hired.

"Why Can't I Work Where I Want to?"

The general purpose of child labor laws is to protect the health, safety, well-being, and opportunities for education of young people. The federal laws forbid anyone from producing, manufacturing, delivering, or shipping goods across state lines if they have employed minors under oppressive conditions in doing so. Almost every word in the law has a technical, legal definition, but its main purpose is to prevent unscrupulous employers from exploiting workers under age 18 or exposing them to physical danger. Persons under 16 are permitted to work in only a limited number of occupations; the minimum age may be lowered to 14 if the employment will clearly not interfere with the minor's schooling.

What are the Limitations?

If you are under 14: Federal child labor laws prohibit employment of minors under age 14, with a few specific exceptions: agriculture; newspaper sales and delivery; employment as an actor on stage, screen, radio, or television; and employment by a parent or legal guardian. Many children of migrant workers work for their parents' employer; however state and local laws mandate that both time and facilities for schooling be made available.

If you are 14 or 15: Generally, people under 16 may not work in any mining or manufacturing occupation. Nor can they work as public messengers; operate or tend any power-driven machine, except office equipment; or perform any jobs related to transportation, warehousing and storage, communications, or public utilities—except for sales or office work in these fields. Construction work, including demolition and repair, is also prohibitied.

Fourteen and 15-year-olds can work at any other type of job, so long as their work is performed outside of school hours and between 7:00 a.m. and 7:00 p.m. During the summer, the evening limit is 9:00 p.m., but even in summer, employment cannot exceed 40 hours per week or eight hours a day.

If you are 16 or 17: Even 16- and 17 year-olds can't be employed in certain jobs or occupations. Seventeen occupational groups have been declared hazardous (actually or potentially) for this age group by the U.S. Secretary of Labor. Among them are motor vehicle driver or helper, logging and sawmill operations, work that involves explosives or radioactive substances, operation of power-driven woodworking or metal-forming machines, mining, meat-packing, manufacture of brick and tile, excavation, roofing, and some other heavy manufacturing operations.

Hurt or Help?

The federal laws govern only those occupations that are specified in them and may not affect employers who are not engaged in interstate commerce. However, state laws generally govern employers whose operations are local. If in doubt, call the Wage and Hour Division of your local U.S. Department of Labor office.

With the scarcity of summer and part-time jobs, young people may feel that the many restrictions on their employment are hurting them more than protect-

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*The basic federal child labor law appears in the U. S. Code, Volume 29, Sections 201-219. Related regulations adopted by the U.S. Secretary of Labor also have the force of law and are in Title 29, Part 570 of the Code of Federal Regulations.

ing them. However, the real purpose of the laws is to protect young people against physical abuse and danger—to give them a chance to grow up.

Warranties and Guarantees

Students have become a large and active part of the American consumer market. Many products, like transistor radios and stereo equipment, are designed for a youth market. Young people aged 13-19 spent $25 billion last year, and they account for 40 percent of U.S. camera sales in dollars.

Many young people who purchase these expensive items are angry and disappointed when they don't work—or work for only a few weeks. That's the time when we hunt up the little paper headed "Warranty" or "Guarantee."

If the warranty is comprehensive and specific, the item goes back to the store or manufacturer for repair, replacement, or a refund. If not, the warranty may reveal that the defective or broken part is not "covered"—that the time period covered by the warranty has elapsed or that an exception applies to the part involved. Sometimes, there are conditions that cause inconvenience, like having to ship the item back to the factory. Or a limitation that the manufacturer will pay the cost of replacement parts only, not the cost of the labor involved in repair.

What You Should Know

The first and most important thing to know about warranties and guarantees is that you should read them *before* you make the purchase. A second point, implied in the first, is that all warranties should be in writing. A salesman may say anything he thinks will sell the product, but he may be gone when you come back in three months. Even if he is still there, it's your word against his, unless you happen to have been shopping with witnesses.

A warranty is a *specific promise* made by a manufacturer or seller about a product or a service—its performance, durability, construction, or some other quality. Not all statements made by a seller are warranties. "I've never seen a stronger plastic case," is not a specific statement about the item, and a court would probably regard it as just the salesman's (incorrect) opinion.

Some sellers make statements that no reasonable person could consider as facts or promises. "World's finest," "a true miracle," and "guaranteed to last and last" are examples. These kinds of statements are called "puffing."

Implied Warranties

A guarantee is a warranty in words or writing. Consumers may also be protected by *implied* warranties of "title" or "fitness," which courts increasingly honor.

"Title" simply means the seller's implied guarantee that he is actually the owner of the product he is selling. If he is not, and you must return the product to the rightful owner, the seller is considered to have broken the implied title warranty and can be forced by the court to refund your money.

Another implied warranty is "fitness"—a basic standard of performance. Although there need be no express promise that a steam iron will produce steam, nearly everyone (including the courts) would agree that it should. If it doesn't, there has been a breach of warranty. With food products, a "fitness" warranty implies that the food is edible and is not dangerous in some unexpected way, such as peanut butter that contains pebbles instead of peanut chunks.

Implied warranties may be voided by a seller if he makes "disclaimers"—express statements about his responsibility for a product. Statements like "sold as is" or "No warranties apply except those stated herein" generally mean that the seller's responsibility ends with the sale or applies *only* to what is specified. Most used goods are sold "as is," even if they aren't specifically marked.

For inexpensive items, even an "unlimited" warranty may be of no value if the merchant decides not to honor it. Going to court may not be worth the cost or effort, but all the same, a consumer has lost money.

If a merchant refuses to honor a warranty, you can report him to the nearest local office of the Better Business Bureau—and to all of your friends. He will often change his mind if you inform him that you plan to do so. Also, consumer help organizations and many local governments have active programs for "watchdogging" unscrupulous merchants.

If you've been wronged in regard to a warranty or a guarantee, you can help yourself and others by pursuing the issue with a consumer help organization and by informing others.

Curfews

As school controls on student behavior decrease as a result of judicial decisions, many young people may find that their public behavior away from school is subject to special governmental restrictions such as curfews.

Curfews forbid persons under a specified age from being out on the public streets after a certain hour. Curfews are not new, and some, based on threat of civil disorder or other public dangers have even been applied to the entire population for short periods of time. But curfews limited to persons under a certain age are unique in being permanent.

Youth Curfews

Curfews on youth activity often have a number of underlying reasons. Sometimes they are generated out of fears of high juvenile crimes rates. Others have, no doubt, been pushed by parents who hope that children forced to stay at home might do more studying. The most usual,

and legally sustainable basis for a youth curfew, however, has been the desire to protect the physical well-being of young people. As a result, most successfully applied curfews have been subject to exceptions which permit young people to leave their homes if they are accompanied by responsible adults, or in other circumstances where they will be physically secure.

The strong public interest in the safety of young people has even sustained the application of curfew laws against parents who permit their children to be on the streets after a certain hour. In some cases, the interference with parental control of children has been based upon the need to protect society against juvenile delinquents as well.

While most youth curfew laws apply to nighttime hours, some have also been applied to daylight periods—often those times when children are expected to be in school. More often, however, this problems of truancy is handled under compulsory school attendance laws, rather than by curfew laws.

Constitutional Objectives

Aside from parents objecting to state interference in the control of their children, minors have also challenged curfew laws. Usually the basis for objection is that they violate constitutional rights of minors which permit them to freely associate, travel, or exercise freedom of speech or religion. In *Prince v. Massachusetts*, a famous case which reached the United States Supreme Court, the state's ordinance prohibiting minors from distributing pamphlets on the street was upheld even though the materials involved were religious tracts, and the children were participating with parental consent. In the Court's opinion, the public's need to protect the health and welfare of children justified interference with parental rights, and limitation of the acknowledged constitutional rights of the child. Had the case involved adults instead of children, this limitation would not have been permitted by the courts.

Invalid Curfews

Some curfew attempts have been defeated, particularly where it appeared that the law's limitations far exceeded the need to protect either the child or society at large. For example, where a curfew law was written to prohibit a minor's return from night classes, the library, extracurricular school activities and the like, it was held to be unreasonable. Generally, curfew laws which prohibit the mere presence of a minor in a public place are more likely to be struck down by the courts upon legal challenge than those which oppose remaining in a public place unnecessarily. In the latter respect, curfew laws are much like loitering laws which apply to adults as well as minors.

Curfew laws have occasionally been invalidated for being too vague, arbitrary, unreasonable or discriminatory, or for denying persons arrested under them due process of the law under the Fourteenth Amendment to the U.S. Constitution. But most have been upheld if they appeared to be reasonably limited, both on their face and in their application, to the valid state objectives of protecting youth.

The Current Situation

Recently, some courts have tended to look askance at broadly limiting otherwise permissible behavior merely on the basis of age, but there seems little doubt that youth curfew ordinances are still permissible.

In November 1976, the U.S. Supreme Court refused to hear an appeal from a lower court, which ruled in support of a youth curfew ordinance. Two of the Supreme Court Justices believed that the importance of "the freedom to leave one's house and move about at will," and recent decisions recognizing the constitutional rights of youth, warranted review by the High Court. But the seven other members of the Court apparently disagreed—so the curfew in Middletown, Pa., *(Bykofsky v. Middletown)* stands, and presumably so may others throughout the land.